

CONTRACT

PROJECT: Washington County Emergency Watershed Protection Program

SITE: Washington County Gunlock EWP Site Santa Clara River Revegetation in Sections 21, 22, & 28, T40S, R17W Salt Lake Base and Meridian, in Washington County, Utah.

The names and addresses of the parties to this contract, who shall be referred to as "COUNTY" and "CONTRACTOR" respectively, are as follows:

COUNTY: WASHINGTON COUNTY
 197 EAST TABERNACLE
 ST. GEORGE, UTAH 84770

CONTRACTOR: FELLER ENTERPRISES, LLC
 708 EAST 1100 SOUTH
 ST. GEORGE, UT 84790

The County and the Contractor mutually agree on the 19th day of February, 2010, as follows:

1. CONTRACT DOCUMENTS

In addition to the terms of this contract, this contract incorporates by reference the following documents (referred to as contract documents) and represents the complete agreement between County and Contractor:

- (a) Invitation To Bid (Notice to Bidders), dated February 03, 2010
- (b) Proposal Instructions to Bidders
- (c) Proposal Form
- (d) Plans and specifications
- (e) Pre-Bid Conference Notes
- (f) Payment and Performance Bonds
- (g) Certification of Legal Work Status
- (h) Addendum #1

2. DESCRIPTION OF WORK

The contractor shall perform and complete in strict conformity with this contract the work as described and shown in the contract documents, consisting generally of the plans and specifications of Washington County Gunlock EWP Site Santa Clara River Revegetation in Sections 21, 22, & 28, T40S, R17W Salt Lake Base and Meridian, in Washington County, Utah.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR IN UTAH MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS:

State of Utah
Department of Occupational and Professional Licensing
P. O. Box 156741

Salt Lake City, Utah 84114-6741
Phone: 866-275-3675/801-530-6628
Fax: 801-530-6511

3. CONTRACT PRICE

The contract price, which is the amount which Contractor shall accept as full payment for the work above agreed to be done, are the amounts determined in accordance with the contract documents for the prices stated for lump sum items completed plus the total number of each of the units of work completed at the unit prices stated. The prices named in the proposal form as follows:

GUNLOCK EWP SITE SANTA CLARA RIVER REVEGETATION SCHEDULE OF WORK

ITEM No.	ITEM	SPEC #	UNIT	QTY	UNIT PRICE	TOTAL PRICE
1.	Mobilization and Demobilization	8	1	Job	\$ 5,000.00	\$ 5,000.00
2.	Seeding	2	Acre	22.5	\$ 475.00	\$ 10,687.50
3.	Dormant Cutting/ Clump Harvesting & Handling	EWP 2	Each	5,800	\$ 2.00	\$ 11,600.00
4.	Dormant Planting Cluster / Clump	EWP 2A	Each	5,800	\$ 6.75	\$ 39,150.00

TOTAL CONTRACT PRICE **\$ 66,437.50**

4. TIME FOR COMPLETION AND PAYMENT

The time for the completion of this work is twenty-four (24) working days from the contract starting date as provided in the contract documents and shown in the Notice To Proceed.

In consideration of the work by Contractor, County shall pay Contractor the contract price, which shall be paid in full on or before thirty (30) days after the work is completed, inspected, and accepted by County. County shall be sole judge of quality of performance.

**WASHINGTON COUNTY
EMERGENCY WATERSHED PROTECTION PROGRAM
2009 EWP – GUNLOCK EWP SITE
SANTA CLARA RIVER REVEGETATION
IN SECTIONS 21, 22, & 28 T40S, R17W, SLB&M
IN WASHINGTON COUNTY**

SECTION 1 Terms, Definitions, Abbreviations and Symbols

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SECTION 1

TERMS, DEFINITIONS, ABBREVIATIONS AND SYMBOLS

Agency—an administrative government division.

Agent—an employee empowered to bind his or her organization legally in contract negotiations.

Bid—an offer in response to an invitation for bids.

Bond—a written instrument executed by a seller and a second party (the surety or sureties) to ensure fulfillment of the principal's obligations to a third party (the obligee or buyer), identified in the bond. If the principal's obligations are not met, the bond ensures payment, to the extent stipulated, of any loss sustained by the obligee.

Claim—a demand by one party to contract for something from another party, usually but not necessarily for more money or more time. The word does not imply any disagreement between the parties, although claims often lead to disagreement.

Clause—a statement of one of the rights and/or obligation of the parties to a contract. A contract consists of a series of clauses.

Contract—an agreement between two or more people, especially a written one enforceable by law.

Contract Administration—the process of ensuring compliance with contractual terms and conditions during contract performance up to contract closeout or termination.

Contract Closeout—the process of verifying that all administrative matters are concluded on a contract that is otherwise physically complete.

Contractor—the seller or provider of goods and/or services.

County—Washington County

Delay, excusable—a contractual provision designed to protect the provider of goods and/or services from sanctions for late performance. To the extent that it has been excusably delayed, the provider of goods and/or services is protected from default termination or liquidated damages. Examples of excusable delays are acts of God, acts of the government, fire, flood, quarantines, strikes, epidemics, unusually severe weather, and embargoes.

Design specification—(1) a document (including drawings) setting forth the required characteristics of a particular component, part, subsystem, system, or construction item. (2) a purchase description that establishes precise measurements, tolerances, materials, in-process and finished product tests, quality control, inspection requirements, and other specific details of the deliverable.

Fraud—intentional deception.

Kickback—any funds, gifts, gratuity, thing of value, or compensation of any kind which is directly or indirectly provided to any prime contractor, employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Payment bond—a bond that secures the payment of all materials and wages required in the contract.

Performance bond—a bond that secures the performance and fulfillment of all the undertakings, covenants, terms, conditions, and agreements contained in the contract.

Prime contractor—the principal entity performing under the contract.

Proposal evaluation—an assessment of both the proposal and bidder's ability to successfully accomplish the prospective contract.

Subcontractor—usually a firm/entity who enters into a contract with a prime contract in which the entity usually performs services or provides goods for eventual use in a prime contract.

SECTION 2

SCOPE AND CONTROL OF WORK

AWARD AND EXECUTION OF CONTRACT

The award of the contract, if it be awarded, will be to the lowest responsive, responsible bidder, determined as provided on the Proposal Form, whose proposal complies with all the requirements prescribed. Such award, if made, will be made within the shortest time feasible. If the lowest responsible bidder refuses or fails to execute the contract, the County may consider the next lowest bidder to be the lowest responsible bidder, or may rebid the Project. The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the County and the bidder concerned.

All bids will be compared on the basis of the quantities and unit prices, or lump sums, as shown on the Bid Proposal.

Before award, the bidders may be required to furnish acceptable evidence of adequate capability, equipment and financial resources to adequately perform the job. Bidders found not to be so qualified may have their bids rejected. Any or all bids may be rejected if there is sound, documented reason. If reasonable cause exists to believe collusion exists among bidders, or that prices are unbalanced between bid items, any or all proposals may be rejected.

Notice of Award

Within one day after award of contract by the County, the bidder to whom contract is awarded will be notified of award by telephone, or if no contact is made by telephone, followed by a written notice. Upon notification, bidder may request that the contract documents be held in the County's office to be picked up.

Execution of Contract Documents

On receipt of the contract documents, the bidder shall promptly obtain the required insurance coverage, certificates of insurance, power-of-attorney and contract bonds, execute the contract, and transmit all required documents to the County.

Failure to Execute Documents

Should the bidder fail to furnish County all required documents, properly executed, prior to the starting day of the contract time computed as stated in the Notice of Award, the County may thereafter declare the bidder to be in default and his proposal guarantee forfeited.

Status of Subcontractors

Subcontractors shall be considered employees of the Contractor, and the Contractor shall be responsible for their work.

Subcontracts. The Contractor shall incorporate into all subcontracts, and the subcontractor shall incorporate into all lower tier subcontracts, all of the plans and specifications which are part of the contract between the Contractor and the County.

IRREVOCABLE LETTER OF CREDIT, OR PAYMENT AND PERFORMANCE BONDS

Contractor shall deliver to County an irrevocable letter of credit, satisfactory and in a form acceptable to County, in an amount equal to 100% of the original award price specified in the contract, or shall deliver to the County the following bonds:

- a. a performance bond satisfactory to the County that is in an amount equal to 100% of the original award price specified in the agreement; and
- b. a payment bond satisfactory to the County that is in an amount equal to 100% of the price specified in the agreement.

An acknowledgement by a Notary Public that the person signing the bond is an Attorney-in-Fact for the bonding company shall be attached to each bond.

County may require an additional letter of credit, or performance and payment bonds, if the agreement price is increased. County may secure additional protection by directing the Contractor to increase the amount of the letter of credit, or the amount of the existing bonds. Bonds shall be on forms acceptable to the County. The bonding company's Attorney-in-Fact shall have a Power-of-Attorney filed with the Washington County Clerk. An acknowledgement by a Notary Public that the person signing the bond is an Attorney-in-Fact for the bonding company shall be attached to each bond.

The payment bond must remain in effect until the expiration of six (6) months after the period in which verified claims may be filed, and the performance bond must be paid up and in effect for one year after the acceptance of the job by the County in accordance with the guarantee.

PLANS AND SPECIFICATIONS

Specifications Captions

Captions accompanying specification parts, sections, subsections and paragraphs are for convenience of reference only and do not limit the content of such part, section, subsection, or paragraph.

WORK TO BE DONE

Manufacturer's Recommendations

Where the manufacturer of any material or equipment provides written recommendations or instructions for its use or method of installation (including labels, tags, manuals or trade literature), such recommendations or instructions shall be complied with except where the contract documents specifically requires deviations.

Federal, State, and Local Taxes

Except as otherwise provided, contract unit prices shall include all applicable Federal, State, and Local Taxes.

AUTHORITY OF BOARD AND INSPECTION

Permit Inspections

The contractor shall arrange for code compliance inspections by all agencies issuing permits for the work. The work shall not continue beyond mandatory inspection points without clearance from the controlling agency. Each agency involved shall be notified in accordance with the code they enforce or in accordance with their standard operating procedures. No extensions of time for delays occasioned by such inspections except where, through no fault of the contractor, the inspection is delayed more than one day beyond normal response time after proper notification has been given.

It shall be the contractor's responsibility to see that any required inspection record card is signed off before proceeding with the next phase of the work and completely signed off on completion of the work.

SECTION 3

CHANGES IN WORK

CHANGES INITIATED BY THE AGENCY

Agreed Prices and Changes

The contract price may only be changed by a written change order. Any claim for an increase in the contract price, shall be in writing, delivered to County within ten (10) days of the occurrence of the event giving rise to the claim. If County and Contractor cannot otherwise agree on the amount involved, claims and adjustments in the contract price shall be determined by County. Changes must be within the general scope of this contract in any of the following: drawings, designs, specifications, project sites, and prices.

Any changes from the original contract must be coordinated with the County and the Natural Resources Conservation Services ("NRCS") Government Representative.

All change orders must be incorporated by written modification, signed and dated by the County and Contractor.

VARIATION IN ESTIMATED QUANTITY

If the quantity of an item in this contract varies more than 15% (fifteen percent) above or below the original contract price, an equitable adjustment shall be negotiated between the Agency and Contractor.

Any changes from the original contract must be coordinated with the County and the NRCS Government Representative.

In the event an equitable adjustment is agreed upon, it must be incorporated by written modification, signed and dated by the County and Contractor.

If the quantity variation is such as to cause an increase in the time necessary for completion, the contractor may request, in writing, an extension of time. Upon the receipt of a written request for an extension, the County shall ascertain the facts and coordinate with the NRCS Government Representative.

In the event an extension is agreed upon, it must be incorporated by written modification by the County and Contractor.

TIME EXTENSIONS

If a Contractor is delayed in the completion of the project by any act or neglect of County, or its agents, or by any other Contractor employed by County, or by changes ordered in the Project, or by weather conditions, or by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties or any causes beyond Contractor's control, or by any cause which County's Public Works Director shall decide to justify the delay, then the time required for completion of the Project may be extended by County for a period of any or all of the causes

aforesaid. Any claim by Contractor for an extension of time must be made in writing to County not more than three (3) days following the development of the cause for delay. However, in the case of a continuing cause of delay, only one claim may be made. Whenever County, in County's sole discretion, determines that circumstances warrant an extension of time, County may grant such an extension. If Contractor's request for an extension is granted, in whole or in part, the time for completion of the Project shall be extended by the amount of time granted by County.

In the event an extension is granted, it must be incorporated by written modification by the County and Contractor.

SECTION 4

CONTROL OF MATERIAL

MATERIALS AND WORKMANSHIP

Materials Furnished by County

Materials furnished by the County will be available at location(s) designated by County. They shall be hauled to the site of installation by the Contractor at his expense, including any necessary loading and unloading that may be involved. The cost of handling and placing materials furnished by the County shall be considered as included in the price paid for the contract item involving such furnished material.

The Contractor will be held responsible for all materials furnished to him. Furnished materials, after delivery to Contractor, lost or damaged from any cause whatsoever shall be replaced by the Contractor. The Contractor will be liable to the County for the cost of replacing lost or damaged furnished material and such costs may be deducted from any monies due or to become due the Contractor.

PROTECTION OF WORK AND WORKMANSHIP

The Contractor shall not be responsible for the cost of repairing or restoring damaged portions of the work determined to have been proximately caused by an act of god in excess of 5% (five percent) of the contracted amount, provided that the work damaged was built in accordance with accepted and applicable building standards and the Specifications and Drawings. The Contractor shall obtain insurance to indemnify the County for any damage to the work caused by an act of God if the premium of said insurance coverage is called for as a separate bid item in the bidding schedule for the work. For purposes of this section, the term "act of God" shall only include earthquakes in excess of a magnitude of 3.5 on the Richter Scale.

SECTION 5

UTILITIES

DELAYS

Cooperation During Utility Relocation

When utilities are to be relocated during construction, the Contractor shall cooperate and coordinate with the respective utility owners so they may relocate their facilities to clear the work. Delays in relocation of utilities which result from failure to cooperate and coordinate will not be a cause for an extension of time or non-working days.

SECTION 6

PROSECUTION, PROGRESS, AND ACCEPTANCE OF WORK

CONSTRUCTION SCHEDULE AND COMENCEMENT OF WORK

Construction Schedule

After notification of award and prior to start of any work, the Contractor shall submit to the Public Works Director for approval its proposed construction schedule. The construction schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the project including, but not limited to, estimated starting and completion dates of various activities, and scheduling of equipment. The construction schedule shall reflect completion of all work under the contract within the specified time and in accordance with these specifications.

Beginning of Work

The issuance of Notice To Proceed shall constitute the Contractor's authority to enter upon the site of work and to begin operations. Entry upon the site without authority will be treated as trespassing. The Contractor may start work at any time after the Notice To Proceed is issued.

Sequence of Work

If required by the special provisions, the Contractor shall start construction operations on that part of the project designated by the Public Works Director.

Conduct of Work

The work shall be conducted in such a manner and with sufficient materials, equipment, and labor to insure its completion in accordance with the plans and specifications within the time set forth in the contract.

SUSPENSION OF WORK

Temporary Suspension of Work

If the Public Works Director orders a suspension of all of the work or a portion of the work which is the current controlling operation or operations, due to unsuitable weather or to such other conditions as are considered unfavorable to the suitable prosecution of the work, the days on which the suspension is in effect shall not be considered working days.

If a suspension of work is ordered by the Public Works Director, due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the contract, the days on which the suspension order is in effect shall be considered working days.

DELAYS AND EXTENSIONS OF TIME

Written Notice and Report

Documentation of Delays

When the Public Works Director authorizes an extension of time for delay, a report shall include the following:

1. The date the Public Works Director was notified of delay.
2. Date the delay began.
3. Exact description for cause of delay.
4. Documentation showing when and from whom ordered.
5. Description of steps taken to get project back on schedule
6. Statement of actual time lost due to delay.

TIME OF COMPLETION

Starting of Contract Time

Within three (3) calendar days after the contract, bonds, certificates of insurance and other documents have been returned and properly completed by the Contractor, the Notice To Proceed will be issued. The Notice to Proceed will indicate the contract starting time.

COMPLETION AND ACCEPTANCE

Inspection and Acceptance

The following individual is designated as the liaison between the County and the Contractor:

Ron Whitehead, Washington County Public Works Director
197 East Tabernacle
St. George, UT 84770
Phone: (435) 634-5780
Fax: (435) 634-5781

With regard to this contract, the duties and authority of the Washington County Public Works Director are as follows:

1. General Administration of the Contract. The primary function of the Public Works Director is to provide the general administration of the contract. In performing these duties, he is the County's representative during the entire period of construction.
2. Inspections, Opinions, and Progress Reports. The Public Works Director, or County's agents, which may include the engineers and employees of the NRCS, shall keep familiar with the progress and quality of the work by making periodic visits to the Project site. General determinations shall be made as to whether the work is proceeding in accordance with the contract. The Public Works Director will keep the Contractor informed of such progress, and will use his best efforts to protect the County from defects and deficiencies in the work. The Public Works Director will not be responsible for the means of construction, or for the sequences, methods, and procedures used therein, or for Contractor's failure to perform the work in accordance with the contract.

3. Access to Work Site for Inspections. The Public Works Director and/or the Public Works Director's agents shall be given free access to the work at all times during its preparation and progress. However, the Public Works Director is not required to make exhaustive or continuous on-site inspections to perform his duties of checking and reporting on work progress.
4. Interpretation of Contract Documents; Decisions on Disputes. The Public Works Director will be the initial interpreter of the contract requirements, and make primary decisions on claims and disputes between Contractor and County.
5. Rejection and Stoppage of Work. The Public Works Director shall have authority to reject work that, in his opinion, does not conform to the contract documents, and in this connection to stop the work or a portion thereof, when necessary. The Contractor shall, without charge, replace any material or correct any workmanship found by the Public Works Director not to conform to the contract requirement. If the Contractor does not promptly replace rejected material or correct rejected workmanship, the County,
 - a. May, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or
 - a. May terminate the Contractor's right to proceed.
6. Final Inspection. Upon written notice from Contractor that the Project is complete, the Public Works Director shall make a final inspection of the Project, and will notify Contractor in writing of any particulars in which this inspection reveals that the Project is defective. Contractor shall immediately make such corrections as are necessary to remedy such defects.

No Waiver of Legal Rights

The County shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of work and payment therefore from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the contract.

The County shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or his surety, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the contract.

Neither the acceptance by the Engineer or by his representative, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Engineer shall operate as a waiver of any portion of the contract or of any power herein reserved, or of any right to damages.

A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

Non-Complying Work

Neither the final certificate of payment nor any provision in the contract documents, nor partial or entire occupancy of the premises by the County, shall constitute an acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

General Guarantee

The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of the work unless a longer period is specified. The County will give notice of observed defects with reasonable promptness.

The Contractor shall obtain and deliver to the Engineer all written guarantees required to be furnished by the specifications. Each of such guarantees shall be underwritten by the Contractor for the full period prescribed therein, and shall bear his endorsement to such defect.

NOTICE OF POTENTIAL CLAIM

The contractor shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by the Engineer, or the happening of any event, thing or occurrence, unless he shall have given the Engineer due written notice of potential claim.

The written notice of potential claim shall set forth the reasons for which the Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim.

CONTRACTOR'S WORK DAYS AND WORK HOURS

Working Days Limitations

Work shall be performed a minimum of six (6) days per week during daylight hours only. No work shall be performed on Sunday.

Working Hours Limitations

Work at the project site may only be performed during daylight hours.

Regular Work Schedule

The Contractor shall furnish a work schedule with the Construction Schedule and inform the Engineer at least two (2) days in advance of changing the schedule. The schedule shall include the times for starting and ending work on each day.

Exceptions

The limitations on working hours and days shall not apply to emergency work made necessary by unusual conditions where such work is necessary to protect the project work, to protect the property of others, to protect life, or to protect the orderly flow of traffic.

RIGHT-OF-WAY AND ACCESS

Right-of-Way and Temporary Construction Work Areas

All work shall be performed within the right-of-way, easements, and temporary work areas indicated on the plans, except and when the contractor has obtained prior written approval from the property owners affected by the use of any other areas. Prior to entry on any such properties, the contractor shall provide the Engineer with a copy of the prior written approval.

Access

No separate payment will be made for installation of temporary access road, reconstruction and maintenance during construction.

CLEANING UP

Contractor will keep the site where it will perform the work free from accumulations of waste materials, rubbish and other debris resulting from the work, and at the completion of the work, Contractor will remove all waste materials, rubbish and debris from and about the site as well as all tools, construction equipment and machinery, and surplus materials, and will leave the site clean. Contractor will restore to their original condition those portions of the site not designated for EWP measures by the contract documents.

TRAFFIC CONTROL

Traffic control is the responsibility of Contractor. Traffic control plan needs to be submitted to and approved by Washington County Public Works Director before construction begins. Contractor shall meet all safety requirements.

DUST CONTROL

Dust control is required where Contractor is working (roads, mining site, river site, etc.).

GRAVEL ROADS

Contractor is responsible for maintaining all gravel or dirt roads needed by Contractor to obtain access to or from the work sites.

SUBCONTRACTORS

Contractor will be fully responsible for all acts and omissions of its subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that he is responsible for the acts and omissions of persons directly employed by him. Nothing in this agreement shall create any contractual relationship between any subcontractor and County or any obligation on the part of County to pay or to see to the payment of any moneys due any subcontractor, except as may otherwise be required by law.

Contractor agrees to bind specifically every subcontractor to the applicable terms and conditions of this agreement for the benefit of County.

CONTRACTOR ACKNOWLEDGEMENTS

Contractor acknowledges the following:

1. Hazards were created by a flood event that occurred in Washington County August 1, 2007. The storm did damage mainly along the banks of the Tobin Wash and the Santa Clara River. The damage caused by the Flood has made the riverbank areas susceptible to further severe damage from even normal stream flows. Consequently, County has need of emergency watershed protection ("EWP") measures to relieve hazards and damages created by the Flood; and
2. County has entered into a cooperative agreement with the NRCS, whereby County shall implement EWP measures for Washington County 2009 EWP – Gunlock EWP Site Santa Clara River Revegetation in Sections 21, 22, & 28, T40S, R17W, Salt Lake Base and Meridian, in Washington County, Utah located in Washington County, which must be completed within twenty-four (24) days from the date of County's contract.
3. The work to be performed by Contractor herein, is part of the EWP measures for Washington County 2009 EWP Gunlock EWP Site Santa Clara River Revegetation in Sections 21, 22, & 28, T40S, R17W, Salt Lake Base and Meridian, in Washington County, Utah. in Washington County, which must be completed within twenty-four (24) working days from the date of County's contract.
4. Any delay in timely supplying the Work to the County, as set forth in this contract, will result in County sustaining damages because of County's consequent inability to timely complete the EWP measures referred to in paragraphs 2 and 3 above.

RIGHTS AND REMEDIES

1. If Contractor, at Contractor's specific fault, does not timely complete the work, County may elect to accept as liquidated damages, for Contractor's breach of contract, the amount of \$5,000 per day for each day the work is not timely completed. In the event that the County declines to accept the work by Contractor after completion of the work, County's election to accept as liquidated damages for Contractor's breach of contract shall include the stated liquidated damage amount per day from the date that the work should have been timely completed until the actual date the County accepts the work. The accumulated liquidated damage amount may be deducted from amounts County owes Contractor pursuant to this agreement, provided that, in the event that the amount County owes Contractor is not enough to cover the liquidated damage amount, County may sue to enforce Contractor's Payment and/or Performance Bond, or exercise the irrevocable Letter of Credit posted by Contractor. Alternatively, County may elect to pursue any or all other remedies available at law. Contractor acknowledges that \$5,000 per day for each day the work is not completed and accepted by County, pursuant to this Agreement, is a reasonable estimation of damages by County.

2. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.
3. County may, on seven (7) days written notice to Contractor, terminate this agreement before the completion date hereof, and without prejudice to any other remedy it may have, when Contractor defaults in the performance of any material provision herein, or fails to carry out the performance of the work in accordance with the provisions of this agreement. If the amount that reflects the portion of the work that has been satisfactorily completed by Contractor, determined in the sole judgment of County, exceeds the expense of finishing the work, County will pay such excess to Contractor. However, no amount shall be paid to Contractor until the work has been completed, inspected and accepted by County. If the expense of finishing the work exceeds the value of the work completed by Contractor at the time of termination, determined in the sole judgment of County, Contractor shall pay the difference to County.
4. If the County terminates the Contractor's right to proceed, and if County elects to accept liquidated damages pursuant to the provisions of this paragraph, liquidated damages shall continue to accrue from the date the work should have been completed by the Contractor to the date the work has been completed, inspected and accepted by County.

SECTION 7

SPECIAL CONTRACT PROVISIONS

EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION)

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity (Federally Assisted Construction) clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Contractor's noncompliance with the Equal Opportunity (Federally Assisted Construction) clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies

invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.

7. The Contractor will include this Equal Opportunity (Federally Assisted Construction) clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

NOTICE TO PROSPECTIVE FEDERALLY ASSISTED CONSTRUCTION CONTRACTORS

1. A Certification of Nonsegregated Facilities must be submitted prior to the award of a federally assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.
2. Contractors receiving federally assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

1. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.
2. Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

ANTI-KICKBACK PROCEDURES

During the performance of this contract, contractors, prime and subcontractors, are prohibited from providing or attempting to provide or offering to provide any kickback; soliciting, accepting, or attempting to accept any kickback; including directly or indirectly the amount of any kickback in the contract price charged by a prime contractor to the County or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.

The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations in its own operations and direct business relationships.

When the Contractor has reasonable grounds to believe that a violation of kickbacks has occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the Office of Inspector General, United States Department of Agriculture.

The Contractor shall cooperate fully with any Federal agency investigating a possible violation.

NATURAL RESOURCES CONSERVATION SERVICE SUPPLEMENT TO OSHA PARTS 1910 AND 1926 CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS

The Contractor shall comply with OSHA (Occupational Safety and Health Administration) Parts 1910 and 1926, dated 04/06, Construction Industry Standards and Interpretations, and with the Supplement that is attached hereto as "Attachment A".

SECTION 8

RESPONSIBILITIES OF THE CONTRACTOR

LIABILITY INSURANCE

Responsibility for Damage. The County and all officers and employees and consultants thereof connected with the work shall not be answerable or accountable in any manner: for any loss or damage that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person either workmen or the public; or for damage to property from any cause which might have been prevented by the Contractor, or his workmen or other workmen, or anyone employed by him or any subcontractor.

The Contractor shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or at any time before its completion and final acceptance.

The Contractor shall indemnify and save harmless the County and all officers, employees and consultants thereof connected with the work from all claims, suits or actions of every name, kind and description, brought for, or on account of, liabilities, injuries to or death of any person or damage to property resulting from the construction of the work or by or in consequence of any negligence in guarding the work; use of improper materials in construction of the work; or by or on account of any act or omission by the contractor, his agents or any workman or subcontractor during the progress of the work or at any time before its completion and final acceptance.

The Contractor shall be responsible for any liability imposed by law and injuries to or death of any person or damage to property and shall indemnify and save harmless any county, city or district, its officers, employees and consultants connected with the work, within the limits of which county, city or district the work is being performed hereunder, all in the same manner and to the same extent as provided above for the protection of the County and all officers, employees and consultants, thereof connected with the work.

Nothing in the contract is intended to create the public or any member thereof a third party beneficiary hereunder, nor is any term and condition or other provision of the contract intended to establish a standard of care owed to the public or any member thereof.

1. The Contractor shall maintain in full force and effect during the life of this contract the following bodily injury liability and property damage liability insurance:
 - a. Contractual Liability Insurance for liability assumed by the Contractor under agreement with the County. Such insurance as is afforded by the policy to the Contractor for Contractual Liability Insurance shall include coverage for property damage caused by blasting, collapse, structural injuries or damage to underground utilities. The policy shall not contain the so called "x" "c" "u" exclusions. The primary liability policy shall be on an "occurrence" form or a "claims made within five year

disclosure period” form. The excess liability policy, if used, shall be on an “umbrella” form or a “following form of the primary layer of coverage.” The minimum limits of liability for this insurance shall be as follows for the coverage class indicated on the proposal form.

<u>Type of Liability Coverage</u>	<u>Coverage Limits for Classes Specified</u>		
	<u>L-B</u>	<u>L-C</u>	<u>L-D</u>
Bodily Injury except auto			
Each person	500,000	1,000,000	5,000,000
Each occurrence	1,000,000	1,000,000	5,000,000
Aggregate completed operations and Products only	1,000,000	5,000,000	5,000,000
Property Damage except auto			
Each occurrence	250,000	500,000	5,000,000
Aggregate	500,000	1,000,000	5,000,000
Bodily Injury – Auto			
Each person	500,000	500,000	2,000,000
Each accident	1,000,000	1,000,000	2,000,000
Property Damage Liability – Auto			
Each accident	250,000	250,000	2,000,000
or in lieu of all above			
Combined single Limit Bodily Injury and Property Damage			
Each occurrence	1,000,000	5,000,000	5,000,000
Aggregate	1,000,000	5,000,000	5,000,000

If no coverage is specified, coverage shall be as follows:

<u>Project Location</u>	<u>Class</u>
GUNLOCK EWP SITE SANTA CLARA RIVER REVEGETATION In Sections 21, 22, & 28, T40S, R17W Salt Lake Base and Meridian Washington County, Utah	L-C

- b. An Additional Insured Endorsement to the Contractor’s Liability Insurance policy naming the County and its officers, employees and consultants as additional insureds in the form approved by the County.
- c. When Class L-C coverage is specified, the following requirements shall apply:

- (1) An additional certification from the insurance company shall be furnished indicating that the aggregate limits have not been reduced by settled claims to less than the amount of coverage required.
 - (2) The certification required in "a" above shall also be furnished at six month intervals after the original submittal throughout the term of the contract.
 - (3) A photocopy of the policy shall be furnished in addition to the certificate of insurance. If the policy has been in force less than 90 (ninety) days and is not available to copy at the time of entering into the contract, it shall be furnished as soon as it is available, but not more than 60 (sixty) days after the contract is executed. Payments to the Contractor may be withheld until this requirement is met.
2. On projects where no explosives shall be used and no demolition is involved, the coverage for explosion and collapse may be omitted. On projects where no excavation is involved, the coverage for underground hazard may be omitted. The omission of said coverages, at the Contractor's option, shall not abrogate the contractor's responsibilities for indemnification.
3. Evidence of insurance (Contractual Liability and Additional Insured Endorsement) in compliance with the requirements of Paragraph A herein shall be furnished to the County by Certificate of Insurance in the form as approved by the County.
4. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve the Contractor for liability in excess of such coverage, nor shall it preclude the County from taking such other actions as is available to it under other provision of this contract or otherwise in law.

WORKERS COMPENSATION INSURANCE

Evidence of Insurance

Contractor shall provide County with Certificates of Workers Compensation Insurance, both original and replacement of expired or cancelled certificates.

THE CONTRACTOR'S REPRESENTATIVE

The Contractor to whom the contract is awarded shall provide the following information in writing and submit it at the time and concurrently with the signed contract, contract bonds and certificates of insurance. Failure to comply may result in delays in the processing of the contract documents.

1. Name of authorized representative at the job site.
2. Address and telephone number of authorized representative.
3. Address of the nearest office of the Contractor, if any, and the name and telephone number of a person at that office who is familiar with the project.

4. Address and telephone number of the Contractor's main office and the name and telephone number of the person at that office familiar with the project.

PUBLIC SAFETY

Contractor shall require that all persons on the job site be equipped with and wear helmets that comply with ANSI Z 89.1-1969, Class A of Class D, except that those used in high voltage electric shock (above 600 volts) area shall comply to ANSI Z 892-11971 Class B.

CONSTRUCTION AREA – HARDHATS REQUIRED BEYOND THIS POINT

Contractor shall install the above sign at entries to shops, construction yards, job access points, and all project sites.

CERTIFICATION OF LEGAL WORK STATUS

Contractor (a subcontractor of Contractor or contract employee of Contractor) shall certify that it does not and will not, during the performance of this contract, knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. Contractor agrees to produce, at the County's request, such documents which are required to verify compliance with applicable State and Federal laws. If the Contractor knowingly employs workers in violation of 8 USC § 1324a, such violation shall be cause of unilateral cancellation of the contract between Contractor and the County. In the event this contract is terminated due to violation of 8 USC § 1324a by the Contractor or subcontractor of the contractor, the Contractor shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by the County as well as attorney fees.

I certify that I have read, understand and agree to comply with the requirements herein.

Contractor

Name: _____

Company

Address: _____

Signature

Date

Official Title

On the ____ day of _____, 20 __, personally appeared before me _____, who being by me duly sworn did say that he/she is the _____ of _____ and that he/she executed the foregoing document on its behalf being authorized and empowered to do so by the _____ and he/she did duly acknowledge to me that such was executed for the uses and purposes stated therein.

Notary Public

SECTION 9

MISCELLANEOUS PROVISIONS

AUTHORIZATION

Each individual executing this agreement does represent and warrant to each other so signing that he or she has been duly authorized to sign this agreement in the capacity and for the entities set forth where he or she so signs.

UTAH LAW TO GOVERN

This agreement has been drawn and executed in the State of Utah. All questions concerning the meaning and intention of any of its terms or its validity shall be determined in accordance with the laws of the State of Utah.

BINDING ON SUCCESSORS IN INTEREST

This agreement shall bind the parties hereto and their successors and heirs.

AGREEMENT NOT ASSIGNABLE

It is hereby agreed by the parties that there will be no assignment or transfer of this agreement, nor of any interest in this agreement.

INTEGRATION

All agreements heretofore made in the negotiation and preparation of this agreement between the parties hereto are superseded by and merged into this agreement, no statement or representation not embodied herein shall have any binding effect upon the parties hereto and there shall be no amendments hereto except those in writing signed by the parties hereto.

TIME IS OF THE ESSENCE

Time is of the essence with regard to this agreement as to each covenant, term, condition, representation, warranty and provision hereof.

NUMBER AND GENDER

The singular shall be interpreted as the plural, and vice versa, if such treatment is necessary to interpret this agreement in accord with the manifest intention of the parties hereto. Likewise, if either the feminine, masculine or neuter gender should be one of the other genders, it shall be so treated.

PARAGRAPH HEADINGS

The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this agreement.

PARTIAL VALIDITY

If any portion of this agreement shall be held invalid or inoperative, then insofar as is reasonable and possible:

1. The remainder of this agreement shall be considered valid and operative; and
2. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

WAIVER

The waiver by any party to this agreement of a breach of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any subsequent breach, whether of the same or any other provision of this agreement. Any waiver shall be in writing and signed by the waiving party.

NECESSARY ACTS AND COOPERATION

The parties hereby agree to do any act or thing and to execute any and all instruments required by this agreement and which are necessary and proper to make effective the provisions of this agreement.

AMBIGUITIES

This agreement has been negotiated and drafted by all parties hereto and the general rule of contract construction that ambiguities shall be construed against the draftsman shall have no application to this agreement.

NO THIRD PARTY BENEFICIARIES

This agreement is not intended to be a third-party beneficiary contract for the benefit of any third parties.

COUNTERPARTS

This agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

AMENDMENTS

This agreement may be amended from time to time, provided, however, that an amendment hereto must be in writing, signed by the parties hereto.

ATTORNEY'S FEES AND COSTS

In the event of a default in the performance of the terms and conditions of this agreement, the defaulting party agrees to pay all costs and expenses arising out of such default, including, but not limited to, reasonable attorney's fees.

DATED this ____ day of February, 2010.

By _____
Its _____

WASHINGTON COUNTY

James J. Eardley, Chair
Washington County Commission

ATTEST:

Kim M. Hafen
Washington County Clerk-Auditor